

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON RICHMOND,

Defendant-Appellant.

UNPUBLISHED

July 7, 2000

No. 204930

Recorder's Court

LC No. 94-005109

AFTER REMAND

Before: Jansen, P.J., and Hood and Saad, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and sentenced to serve one year probation. Defendant appealed as of right and moved for a remand for an evidentiary hearing on the issue whether his right to a speedy trial was violated. This Court granted the remand motion. On remand, the trial court denied defendant's motion to dismiss. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, we review de novo defendant's claim that he was denied his constitutional right to a speedy trial. *People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999). In determining whether a defendant was denied a speedy trial, a court should consider the length of delay, the reason for the delay, defendant's assertion of the right to a speedy trial, and any prejudice to the defendant. *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972); *People v Grimmett*, 388 Mich 590, 605-606; 202 NW2d 278 (1972).

On balance, despite the presumption of prejudice to defendant, we conclude that he was not denied his constitutional right to a speedy trial. Defendant violated bond by leaving the state without permission, see MCL 780.69(1)(c); MSA 28.872(59)(1)(c), resulting in his failure to appear for proceedings in this matter. Further, the record demonstrates, at a minimum, defendant's passive acquiescence to the inaction of his attorneys in asserting his right to a speedy trial. While such acquiescence does not constitute a waiver of the constitutional right, see *Grimmett, supra* at 603-605, defendant's failure to take active measures to assert this right by notifying the Michigan authorities of his whereabouts or his desire to proceed to trial weighs heavily against his claim. Accordingly, we

conclude that defendant's right to a speedy trial was not violated. *People v Simpson*, 207 Mich App 560, 564; 526 NW2d 33 (1994).

Affirmed.

/s/ Kathleen Jansen

/s/ Harold Hood

/s/ Henry William Saad